

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:11-cv-390-RJC-DSC**

CATHY BRANDON,)
)
Plaintiff,)
)
vs.) ORDER
)
CHARLOTTE MECKLENBURG BOARD)
OF EDUCATION,)
)
Defendant.)
)

THIS MATTER comes before the Court upon its own motion. On September 9, 2011, the Court denied Plaintiff Cathy Brandon's ("Plaintiff") Application to Proceed in District Court Without Prepaying Fees or Costs. (Doc. No. 3). The Court denied Plaintiff's motion because it was incomplete and did not allow the Court to determine whether Plaintiff could afford all or part of the filing fee for this action. (Id.). The Court ordered Plaintiff to remit the \$350 filing fee or file an amended Application to Proceed in forma pauperis by October 11, 2011. (Id.). Plaintiff failed to do either.

Federal Rule of Civil Procedure 41(b) empowers the Court to dismiss a case with prejudice where the plaintiff fails to comply with a court order. "These cases call for review of (i) the degree of personal responsibility of the plaintiff; (ii) the amount of prejudice caused the defendant; (iii) the existence of a history of deliberately proceeding in a dilatory fashion, and (iv) the existence of a sanction less drastic than dismissal." Ballard v. Carlson, 882 F.2d 93, 95 (4th Cir. 1989). Where the court has previously warned that dismissal with prejudice would result from the plaintiff's failure to obey an order, the Fourth Circuit has affirmed such a dismissal. Id.

at 95-96.

Here, the Court warned Plaintiff that her failure to obey the Court's order "may result in the summary dismissal of this action." (Doc. No. 3). In light of this warning, and the four factors listed above, dismissal is appropriate. But because the Court did not specifically warn Plaintiff that such dismissal would be with prejudice, the Court will dismiss without prejudice.

IT IS, THEREFORE, ORDERED that:

1. Plaintiff's Complaint, (Doc. No. 1), is **DISMISSED without prejudice**.

Signed: October 24, 2011



Robert J. Conrad, Jr.
Chief United States District Judge
